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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ORANGE COUNTY WATER DISTRICT,

Plaintiff and Appellant,

v.

RADIOSHACK CORPORATION,

Defendant and Respondent.

D075111

(Super. Ct. No. 30-2008-00078246)

APPEAL from a judgment of the Superior Court of Orange County, Nancy Weiben Stock and Stephen J. Sunvold, Judges. Affirmed in part and reversed in part.

Connor, Fletcher & Hedenkamp, Edmond M. Connor, Douglas A. Hedenkamp; Miller Axline, Duane C. Miller and Justin Massey for Plaintiff and Appellant.

Booth, Mitchel & Strange and Robert W. Huston for Defendant and Respondent.

The Orange County Water District (the District) filed this action against RadioShack Corporation (RadioShack) and several other owners and operators of sites in the South Basin area of Orange County for allegedly contributing to the contamination of

groundwater in the South Basin region. As discussed more fully in our prior opinion arising out of this case, *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343 (*Sabic*), the District asserted statutory claims for damages under the Carpenter–Presley–Tanner Hazardous Substance Account Act (HSAA; Health & Saf. Code, § 25300 et seq.) and the Orange County Water District Act (OCWD Act; Stats. 1933, ch. 924, p. 2400; West's Ann. Wat.—Append. (2010 ed.) ch. 40) and for declaratory relief (Code Civ. Proc., § 1060). The District also asserted common law claims for negligence, nuisance, and trespass. Following numerous motions for summary judgment and summary adjudication, and a limited bench trial on the District's ability to bring suit under the HSAA, the trial court entered judgments in favor of the defendants, including RadioShack, on all of the District's claims. The District appealed.

During the pendency of the District's appeals, RadioShack commenced bankruptcy proceedings, which automatically stayed and severed the appeal of the judgment involving RadioShack (this appeal) from the District's appeals of the judgments involving RadioShack's codefendants. We resolved the appeals involving RadioShack's codefendants in *Sabic*. Our analysis and disposition in *Sabic* varied to some extent depending on the particular defendant(s) at issue. However, for purposes of this appeal, it is sufficient to note that the District's claims against RadioShack and codefendant Universal Circuits, Inc. (UCI) were predicated on the alleged disposal and release of hazardous substances at the same geographic site and, in *Sabic*, we affirmed a judgment in favor of UCI in part as to the District's causes of action under the OCWD Act and for

negligence, trespass and nuisance, and reversed the same judgment in part as to the District's causes of action under the HSAA and for declaratory relief.

Since we issued our opinion in *Sabic*, the automatic stay arising from RadioShack's bankruptcy proceedings has been lifted and this appeal has resumed. However, in light of *Sabic*, the District and RadioShack have filed a joint motion and stipulation requesting that we affirm the judgment involving RadioShack in part as to the District's causes of action under the OCWD Act and for negligence, trespass and nuisance, and reverse the judgment in part as to the District's causes of action under the HSAA and for declaratory relief. In particular, the parties contend that "RadioShack and UCI relied on substantively identical evidence and arguments" in their summary judgment motions, "the substantive issues involved in this [a]ppeal were essentially resolved in *Sabic*," and a partial reversal and partial affirmance of the judgment involving RadioShack would properly "place RadioShack in the same position" as UCI.

We may reverse the judgment, in whole or part, upon stipulation of the parties if we make the following findings: (1) there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal; and (2) the reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement. (Code Civ. Proc., § 128, subd. (a)(8).) Based on our review of the record, we have no trouble making both of these findings.

Considering our disposition of the appeal from the judgment involving UCI in *Sabic*, there is no reasonable possibility that the interests of nonparties or the public will

be adversely affected by the stipulated reversal. Our *Sabic* decision rejected the rationale on which the trial court relied when it granted summary judgment in RadioShack's favor as to the HSAA and declaratory relief causes of action (*Sabic, supra*, 14 Cal.App.5th at pp. 383-387, 418), and there is no apparent reason why the outcome would be any different in this appeal. On the contrary, the parties represent that RadioShack and UCI are similarly situated because they shared the same site and relied on "identical evidence and substantive arguments," and because "the trial court explicitly based its substantive ruling in favor of RadioShack on the same factual findings made in connection with UCI's motion." Given these similarities and the uncontested fact that *Sabic* compels a partial reversal in this case, we conclude that there is no reasonable possibility of any prejudice to nonparties or the public. (*Union Bank of California v. Braille Inst. of America, Inc.* (2001) 92 Cal.App.4th 1324, 1330, 1331 ["If there is reversible error, prompt resolution of the appeal without the considerable expense to the parties of briefing and taxpayer incurred costs of the internal decisionmaking process within the court certainly serves the public interest."].)

The reasons underpinning the reversal request also outweigh any possible erosion of public trust and will not disincentivize pretrial settlement. Public trust in the legal profession is not eroded when parties stipulate to reversal of a judgment premised on error. Quite the opposite—it is advanced. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 381.) Additionally, our acceptance of the stipulated reversal would promote judicial economy by ensuring that the parties need not prepare and submit unnecessary briefing on major substantive issues this court has already resolved. For all these reasons, we

accept the stipulation for reversal of the judgment in part as to the District's HSAA and declaratory relief causes of action. (Code Civ. Proc., § 128, subd. (a)(8).)

Relying on our *Sabic* decision, the parties also request that we affirm the judgment in part as to the District's causes of action under the OCWD Act and for negligence, trespass and nuisance. The parties have not directed us to any authority permitting us to grant a stipulated affirmance of a judgment, nor are we aware of such authority.

However, "[i]t is the appellant's burden to demonstrate the existence of reversible error" (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766), and the District proffers no argument for reversal. Instead, it contends that "RadioShack should be placed in the same position that UCI was placed in by the decision in *Sabic*." We construe these representations as concessions as to the correctness of the trial court rulings as to the OCWD Act, negligence, trespass and nuisance causes of action, and accept the District's concessions accordingly. (*State Farm Mutual Automobile Ins. Co. v. Lee* (2011) 193 Cal.App.4th 34, 40 [accepting concession as to correctness of trial court order].)

DISPOSITION

The judgment is affirmed in part as to the District's causes of action under the OCWD Act and for negligence, trespass and nuisance, and reversed in part as to the District's causes of action under the HSAA and for declaratory relief. The parties shall bear their own costs and fees on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.